MT LEGISLATIVE HISTORY

Chapter 369 19 69

Bill H 454 S _____ Original bill & hist. ___C

H. Committee on Ways & Means S. Committee on Taxation

Hearing Date(s) _____ ___C	Hearing Date(s) _____ ___C
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Date Out _____ ___C	_____ ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

☒ DO PASS AS AMENDED
☐ DO NOT PASS
☐ BE CONCURRED IN
☐ BE NOT CONCURRED IN
☐ BE ADOPTED
☐ BE NOT ADOPTED

STANDING COMMITTEE REPORT

February 8 1969

MR. SPEAKER:

We, your committee on WAYS AND MEANS

having had under consideration HOUSE Bill No. 454

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE AMOUNT OF THE DISTRIBUTOR'S GASOLINE LICENSE TAX; PAYMENT OF THE TAX BY DISTRIBUTORS; ESTABLISHING A REFUND PROCEDURE; LICENSING OF GASOLINE DISTRIBUTORS; EMPOWERING THE STATE BOARD OF EQUALIZATION TO ESTABLISH REGULATIONS; PROVIDING FOR ENFORCEMENT OF THE ACT BY PENALTIES; AND REPEALING SECTIONS 84-1801 THROUGH 84-1814, 84-1818 THROUGH 84-1823, 84-1828, AND 84-1829, R.C.M. 1947, RELATING TO THE GASOLINE DEALER'S LICENSE TAX."

Respectfully report as follows: That HOUSE Bill No. 454

be amended as follows:

Section 2, page 3, following line 12, of the original bill, add a new subsection which reads as follows:

"(8) The words 'aviation gasoline' mean gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft."

and further amend section 10, page 7, line 12, of the original bill, following the word "any" delete the following word "carrier" and insert in lieu thereof the word "person"

and further amend section 10, page 7, line 15, of the original bill, following the word "any" delete the following word "carrier" and insert in lieu thereof the word "person"

and further amend section 11, page 7, line 23, of the original bill, following the word and punctuation "boats," insert the following words and punctuation "airplanes or aircraft,"

Committee Report form
Revised 1968

Chairman.

FORM 19

H.B. 454

and further amend section 11, page 7, line 29, of the original bill, following the word "Montana" delete the period and insert in lieu thereof the following words and punctuation "; and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued."

And, as amended
DO PASS

William E. Goan, Chairman

February 8, 1969

WAYS AND MEANS COMMITTEE

An evening meeting of the Ways and Means Committee was called to order by Chairman Goan at 5:45 p.m. Roll call showed fifteen members present. (Absent Falkenstern, Kosena)

The first bill to be considered by the committee was H.B. 454 which is a recodification of the gasoline act. Rep. Fasbender moved H.B. 454 be reported out of committee DO PASS with the following amendments. Carried unanimously.

Section 2, page 3, following line 12, of the original bill, add a new sub-section which reads as follows:

"(8) The words 'aviation gasoline' mean gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft."

and further amend section 10, page 7, line 12, of the original bill, following the word "any" delete the following word "carrier" and insert in lieu thereof the word "person"

and further amend section 10, page 7, line 15, of the original bill, following the word "any" delete the following word "carrier" and insert in lieu thereof the word "person"

and further amend section 11, page 7, line 23, of the original bill, following the word and punctuation "boats," insert the following words and punctuation "airplanes or aircraft,"

and further amend section 11, page 7, line 29, of the original bill, following the word "Montana" delete the period and insert in lieu thereof the following words and punctuation "; and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued."

H.B. 436 was next to be considered and there was a brief discussion on amendments to be included in this bill. Rep. Ulmer moved H.B. 436 be reported out of committee DO PASS with the following amendments. Carried unanimously.

In line 8 of the title of the original bill after the comma, by adding the words "EFFECTIVE FOR A PERIOD ENDING JUNE 30, 1971"

and further amend line 11 of the title of the original bill after the word "THAT" by adding the words "UP TO"

and further amend line 14 of the title of the original bill after the word "RECONSTRUCTION" by adding the word "MAINTENANCE"

TAXATION COMMITTEE

BILL NO.	SPONSOR	TITLE	COMMITTEE ACTION	FINAL STATUS
		HOUSE BILLS CONTINUED		
204	GOAN	RELATING TO CORPORATION LICENSE TAX	BE CONCURRED IN AS AMENDED 3/2	DIED IN CONFERENCE
219	FASBENDER	EMPOWERING SBE TO REQUIRE IMMEDIATE PAYMENT OF TAX UNDER CORPORATION LICENSE	BE CONCURRED IN 2-22	SIGNED BY GOVERNOR
262	MURPHY	INCREASED EXEMPTIONS UNDER INHERITANCE TAX LAW	BE CONCURRED IN AS AMENDED 2-22	SIGNED BY GOVERNOR
274	CRANSTON	WAIVER OF PENALTY FOR NONFILING OF CRUDE OIL STATEMENT	BE CONCURRED IN AS AMENDED 2-25	SIGNED BY GOVERNOR
284	EAST	AMENDING CLASS. OF PROPERTY INCLUDING TELEPHONE COMPANIES SERVING RURAL AREAS	BE CONCURRED IN	SIGNED BY GOVERNOR
287	BARDANOUVE	REQUIRE CORPORATIONS TO FILE REPORTS OF CHANGES IN FEDERAL TAXABLE INCOME	BE CONCURRED IN 2-20	SIGNED BY GOVERNOR
308	WATT	PROHIBITING CHANGE OF METHOD OF ALLOCATING INCOME TO GAIN TAX ADVANTAGE	BE CONCURRED IN 2-20	SIGNED BY GOVERNOR
351	WATT	CLASSIFICATION OF CERTAIN REAL PROPERTY	BE CONCURRED IN 2-22	SIGNED BY GOVERNOR
383	PAYNE	TIME OF ASSESSMENT OF RESIDENTIAL BUILDINGS	BE NOT CONCURRED IN 2-18	KILLED IN COMMITTE
436	FEISTHAMEL	INCREASE GASOLINE LICENSE TAX	BE CONCURRED IN	SIGNED BY GOVERNOR
445	HIMSL	MAINTENANCE FOR STATE FIRE MARSHAL'S OFFICE	BE CONCURRED IN 2-25	SIGNED BY GOVERNOR
454	DYE	AMOUNT OF DISTRIBUTORS GASOLINE LICENSE TAX	BE CONCURRED IN AS AMENDED, 2-25	SIGNED BY GOVERNOR
478	WAYS&MEANS	INCREASE NET INSURANCE PREMIUMS TAX	BE CONCURRED IN	DIED IN SENATE
504	FASBENDER	PRIVILEGE TAX UPON POSSESSION AND USE OF TAX EXEMPT PROPERTY	BE CONCURRED IN	SIGNED BY GOVERNOR

WAYS AND MEANS COMMITTEE

41st Legislative Assembly

Bill No.	Subject Matter	Date In	Hearing Date	Comments	Date Out	Committee Action	Final Action
375 Hall	Providing for the imposition of a gift tax	1/24	1/29		1/31	DO NOT PASS	KILLED
392 Goan	Exempting $10,000 of income of persons over the age of 70 from State income tax	1/24	2/5		2/5	DO NOT PASS	KILLED
H.R. 3 Bardanouve	Endorsing S.B. 2613 to amend Int. Rev. code to prohibit persons who are not bona-fide farmers from using losses incurred in operations to offset income	1/24	2/5		2/10	DO NOT PASS	KILLED
436 Feisthamel	Increasing gasoline license tax	1/24	2/6		2/8	As amended DO PASS	As of 3/6 To Gov.
443 Kvaalen	Provide that a non-resident engaged in business of custom combining shall pay a flat fee for 60 days, $80 per unit.	1/24		Put into AGRICULTURE			KILLED
454 Dye	An act described as the gasoline license tax act	1/24	2/6		2/8	As amended DO PASS	As of 3/6 To Gov.
474 Watt	Provide a tax on habitable property to replace 1/2 of real property taxes	1/24	1/29		1/31	DO NOT PASS	KILLED

Rep. Bardanouve, in rebuttal, said he would be happy to offer the amendment requested by Mr. Sarsfield in order to clarify the language. He urged the passage of this bill.

Questions by the committee members followed after which those appearing with regard to this bill were excused.

HOUSE BILL 454. Rep. Dye stated this bill was an attempt by the State Board of Equalization to modernize the Gasoline License Tax Act. He introduced Bob Wilson of the State Board of Equalization, who then spoke on the proposal. He stated this law had been amended so many times that it had resulted in confusion and complicated sections which presented problems to the Board and to the oil industry. He discussed the amendments to some sections which needed further clarification and asked that these be adopted.

Ben Havdal, Executive Director of Montana Petroleum Association, stated they were in support of this bill. Henry Loble appeared to ask for the adoption of the amendment explaining the need for it.

Dan Mizner, Executive Secretary of the League of Municipalities and Cities, appeared as being mildly opposed to this bill because of the loss of $225,000 in revenue to counties and cities, but stated they would rather suffer this loss, than face possible lawsuits with the federal government.

Those appearing with regard to House Bill 454 were then excused.

HOUSE BILL 274. This was explained by Rep. Cranston as being legislation drawn up by the State Board of Equalization and merely adds to the statute that the penalty may be waived for nonfiling of crude oil statement. Mr. Havdal also appeared in support of this proposal.

Without objection the meeting was recessed until 1:30 p.m.

The committee on Taxation reconvened at 1:30 p.m. for further consideration of the bills heard in the morning session.

Senator Turnage moved that House Bill 117 be amended. Senator Mathers seconded and motion carried 6-4. Senator Turnage moved that HOUSE BILL 117 AS AMENDED BE CONCURRED IN. Senator Broeder seconded and MOTION CARRIED.

Senator McGowan moved for the adoption of the amendment to HOUSE BILL 445. Senator Rostad seconded and MOTION CARRIED. Senator McGowan moved that HOUSE BILL 445 AS AMENDED BE CONCURRED IN. Senator Reber seconded and MOTION CARRIED.

Senator Reber moved the adoption of the amendments to HOUSE BILL 454. Senator McGowan seconded and MOTION CARRIED. Senator Reber moved that HOUSE BILL 454 AS AMENDED BE CONCURRED IN. Senator Mathers seconded and MOTION CARRIED.

through 23-604, 23-604.1, 23-604.2, 23-605 through 23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through 23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 23-2206, 23-2301 through 23-2323, 23-2401 through 23-2411, and 23-2501 through 23-2507, R.C.M. 1947 are repealed.

Approved: March 15, 1969.

CHAPTER NO. 369

An Act Providing for the Amount of the Distributor's Gasoline License Tax; Payment of the Tax by Distributors; Establishing a Refund Procedure; Licensing of Gasoline Distributors; Empowering the State Board of Equalization to Establish Regulations; Providing for Enforcement of the Act by Penalties; and Repealing Sections 84-1801 through 84-1814, 84-1818 through 84-1823, 84-1828, and 84-1829, R.C.M. 1947, Relating to the Gasoline Dealer's License Tax.

Be it enacted by the Legislative Assembly of the State of Montana:

Citation of act.

Section 1. This act may be cited as the "Distributor's Gasoline License Tax Act."

Section 2. **Definitions.** As used in this act, the following definitions shall apply:

"Gasoline."

(1) The term "gasoline" includes all products commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids, composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. The term "gasoline" does not include special fuels as defined in section 84-1831(e).

"Person."

(2) The word "person" means any person, firm, association, joint-stock company, syndicate or corporation.

"Motor vehicle."

(3) The words "motor vehicle" mean all vehicles operated or propelled upon the public highways or streets of this state, in whole or in part by the combustion of gasoline.

"Use."

(4) The word "use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state of Montana, or of any political subdivision thereof.

"Import."

(5) The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any gasoline shipped or transported into this state from point of origin without this state, other than in the fuel supply tank of a motor vehicle.

"Distributed"—gasoline.

(6) Gasoline deemed to be "distributed". (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat, or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat, or gasoline imported in to this state and placed in storage at refineries or pipeline terminals, shall be deemed to be distributed, for the purpose of this Act, at the time the gasoline is withdrawn from such tanks, refinery or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be distributed after it has arrived in and is brought to rest in this state.

"Distributor."

(7) The word "distributor" means (a) any person who engages in the business in this state of producing,

refining, manufacturing or compounding gasoline for sale, use or distribution,

(b) any person who imports gasoline for sale, use or distribution; and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the state aeronautics commission by section 1-501.

(c) any dealer licensed as of January 1, 1969, except a dealer at an established airport.

"Aviation gasoline."

(8) The words "aviation gasoline" mean gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

Gasoline license tax—amount.

Section 3. **Gasoline license tax—amount.** Every distributor shall pay to the state board of equalization a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to six and one-half cents ($.06½) for each gallon of all gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor. Gasoline exported or sold for export out of the state of Montana shall not be included in the measure of the distributor's license tax.

Aviation gasoline—exemption certificates.

Section 4. Any dealer at an established airport, who purchases aviation gasoline for resale directly to consumers using such gasoline in aircraft or any consumer who purchases such gasoline in lots of not less than fifty (50) gallons for use in aircraft and not for resale and who purchases from a distributor or dealer other than at an established airport, may apply to the state board of equalization for a permit to issue aviation gasoline tax exemption certificates. The application for a permit, the permit itself, and any exemption certificates issued pursuant thereto shall all be in such form and shall contain such information as the board may from time to time require. The board may require the payment of a fee of not to exceed five dollars ($5) for each permit issued and may provide that said permits shall be valid for a period not exceeding five (5) years. No permit shall be

subject to revocation at any time by the board for any violation of law relating thereto or any false statement made by the holder in connection therewith.

So long as his permit remains unrevoked, the holder thereof shall have the privilege to purchase aviation gasoline from any distributor or dealer without the payment of any part of the license tax, imposed by this section, except the part allocated to the state aeronautics commission upon surrendering to the seller an aviation gasoline tax exemption certificate certifying, if the holder is a dealer at an established airport, that the gasoline purchased will be resold only to consumers for use directly in aircraft, and if the holder is a consumer purchasing from a distributor or dealer other than at an established airport and the purchase is fifty (50) gallons or more, that the gasoline is purchased for use directly in aircraft and not for resale; and any distributor or dealer who sells aviation gasoline either directly to the holder of such a permit and who receives a valid certificate directly from the permit holder covering that sale, or who sells to another distributor or dealer who surrenders valid certificates held by him covering prior sales, shall be under no liability or obligation to collect or pay the tax, on the number of gallons covered by such certificates, except the portion thereof allocated to the state aeronautics commission; but notwithstanding any other provision to the contrary, no tax exemption certificate shall be valid for any purpose nor entitle any distributor to the deduction authorized in section 5 of this act unless submitted to the board prior to the end of the second calendar month immediately succeeding the month in which the sale was made with respect to which such certificate issued.

Distributor's statements—payment of tax.

Section 5. **Distributors' statements—payment of the tax.** Each distributor shall, not later than the twenty-fifth day of each calendar month render a true statement to the state board of equalization, duly signed, of all gasoline distributed and received by him in this state during the preceding calendar month, and containing such other information as the state board of equalization may reasonably require in order to administer the gasoline license tax law. The statement shall be accompanied by a payment in an amount equal to the tax imposed

by section 3 of this act, less any refund credit issued under section 11 of this act, and less two percent (2%) of the first six cents ($.06) tax which shall be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by such distributor. In addition a distributor may deduct for each gallon of aviation gasoline sold by him and for which he submits a valid gasoline tax exemption certificate, an amount equal to the tax per gallon except the portion thereof allocated to the state aeronautics commission by section 1-501.

Any distributor engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one (1) statement.

Examination of records.

Section 6. **Examination of records.** The board, or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this act and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand they shall be furnished to the board for review or such dealer shall bear the reasonable cost of examination by an agent authorized or designated by the board at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of such examination is the payment of a tax deficiency.

Records to be kept by distributor.

Section 7. **Records to be kept by distributor.** Each distributor shall keep for a period not to exceed three (3) years such records, receipts and invoices and any other pertinent papers and information as the state board of equalization may require.

Inspection of records.

Section 8. **Inspection of records.** The records, receipts and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting or storing gasoline shall be open and subject

to inspection by the state board of equalization or any of its employees or assistants during business hours in order to ascertain the amount of license tax due.

Invoice of distributors.

Section 9. **Invoice of distributors.** Each distributor in this state shall at the time of delivery, except where authorized by the board, issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the state board of equalization may require.

Information reports.

Section 10. **Information reports.** Any person receiving gasoline, including every common carrier, private carrier and contract carrier of property who shall haul, receive, transport, or ship any gasoline, from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the board of equalization upon its request and within the time specified a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of such products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee and the date of delivery to the consignee.

In case of any person, except licensed distributors, who refuses or fails to file a statement as herein provided for, there is hereby imposed a penalty of twenty-five dollars ($25) for each failure or refusal, provided, however, that if any person shall establish to the satisfaction of the board that his failure to file a statement as prescribed by the board was due to reasonable cause, the board shall waive the penalty.

Refund of license tax—procedure.

Section 11. **Refund of gasoline license tax—procedure.** (1) Any person who shall purchase and use any gasoline, on which the Montana gasoline license tax has been paid, for operating or propelling stationary gasoline engines, tractors used off the public highways and streets, motor boats, airplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, shall be allowed a refund of the amount of

tax paid directly or indirectly on the gasoline so used. Provided, that such refund or drawback should in no instance exceed the tax paid or to be paid, to the state of Montana; and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificates has been issued.

Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid.

The application for refund shall be a signed statement on forms furnished by the board, accompanied by the invoice or invoices issued to the claimant, showing the total amount of the gasoline on which a refund is claimed and the reason, the amount of the tax and any additional information required by the board. Each separate delivery shall constitute a purchase. If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the board.

(2) All applications for refunds shall be filed with the board of equalization within thirteen (13) months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. Provided, however, that a distributor may file a claim for refund of taxes erroneously paid within three (3) years after the date of such erroneous payment. The board shall have one hundred twenty (120) days after receiving the claim to approve or reject it. If approved, the board shall issue a credit in lieu of refund for the amount of the claim, if the claimant is a distributor. For all other persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(3 Should the board of equalization find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected, or the board may require the claimant to file an amended statement. If the state board of equalization determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim

or affidavit is willfully false and made for the purpose of misleading, the board may reject such claim in full. If a claim is rejected, the board may suspend claimant's right to refund for a period not to exceed one (1) year.

(4) Any person, other than a licensed distributor, desiring to claim refund on gasoline purchased shall obtain a permit from the state board of equalization. The application for permit shall contain the applicant's name, address, occupation, nature of business, identification of machinery and equipment in which the taxable motor fuel is to be used, and any other information which may be required by the board.

(5) Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. The state board of equalization shall keep a record of all permits issued and a cumulative record of refunds claimed and paid thereunder.

A fee of one dollar ($1) shall be collected from each person to whom a refund permit is issued. No refund shall be paid to any person unless said person has first secured a refund permit and paid said fee. The refund permit must be renewed and the license fee paid every five (5) years from the date of issuance.

(6) Any person, other than a licensed distributor, shall obtain a permit from the state board of equalization prior to selling gasoline on which a refund may be claimed. The application for permit shall contain the applicant's name, address, place or places of business in the state of Montana, and other information which may be required by the board. Permits issued shall bear a permit number and the date of issuance. The board shall keep a record of all permits issued, cancelled, or suspended. Permits shall be issued for the calendar year upon payment of a fee of one dollar ($1) and must be renewed annually before the first da/ of January.

Any person failing to comply with this subsection shall be subject to a fine of not less than twenty-five dollars ($25) or more than two hundred dollars ($200) or imprisonment in the county jail for a period not less than ten (10) days or more than sixty (60) days, or both fine and imprisonment.

Filing and payment.

Section 12. **Timely mailing treated as timely filing and paying.** Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance, or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance, or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States post office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

If the date for filing any claim, statement, remittance, or other document falls upon a Saturday, Sunday or legal holiday, the filing shall be considered timely if done on the next business day.

License and bond of distributors.

Section 13. **License and bond of gasoline distributors.** All gasoline distributors prior to the commencement of doing business shall file an application for a license with the state board of equalization on forms prescribed and furnished by the board setting forth the information as may be requested by the board. Each distributor shall at the same time file a corporate surety bond or such collateral security or indemnity as may be deemed sufficient by the state board of equalization, but in no case more than twice the estimated amount of gasoline taxes

the distributor will pay to this state each month. Upon approval of the application, the state board of equalization shall issue to the distributor a nonassignable license which shall continue in force until surrendered or canceled.

Penalties—delinquent payment—failure to file statement or pay tax—tax lien.

Section 14. **Penalties — delinquent payment — procedure in case of failure to file statement or pay tax — lien for tax.** Any license tax not paid within the time provided shall be delinquent and a penalty of ten percent (10%) shall be added to the tax and the tax shall bear interest at the rate of one percent (1%) per month from the date of delinquency until paid. Upon a showing of good cause by the distributor, the board may waive penalty.

If any distributor or other person subject to the payment of such license tax shall willfully fail, neglect, or refuse to make any statement required by this act, or shall willfully fail to make payment of such license tax within the time provided, the state board of equalization shall be authorized to revoke any license issued under this act. In addition, the board shall inform itself regarding the matters required to be in such statement and determine the amount of the license tax due the state from such distributor, and shall add thereto a penalty of twenty-five dollars ($25) or ten percent (10%) thereof, whichever is greater, together with interest at the rate of one percent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer shall proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax. All license taxes, penalties and interest due from any distributor under the provisions of this act, shall be a lien upon any and all property of such distributor or other person upon the filing by the state board of equalization of a copy of its statement, or a certified copy of any statement filed with the board, in the office of the county clerk of the county where the distributor's property is situated. The lien shall have precedence over any other claim, lien or demand filed or recorded thereafter. The lien may be enforced in the name of this

state in the same manner as judgment liens are enforced. No action shall be maintained to enjoin the collection of all or any part of the license tax. When the amount due is paid in full before the entry of foreclosure decree, the state treasurer shall release the lien by filing in the office of the county clerk where the lien was filed, a written release. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of the lien a part of the distributor's property to enable the distributor to mortgage, sell or otherwise dispose of it in order to procure funds to pay taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to the lien to insure the payment of all the unpaid taxes, penalty and interest.

Penalties.

Section 15. **Penalties.** Any distributor or other person, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time provided, or who shall be delinquent in the payment of any license tax imposed by this act, or who shall make any false statement with reference to his business, or who shall make any false statement on any claim for refund or who violates any provision of the act, shall, in addition to any other penalties imposed, be deemed guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding one thousand dollars ($1,000) or imprisonment in the county jail for not to exceed six (6) months, or shall be punished by the imposition of both such fine and imprisonment.

Statute of limitations.

Section 16. **Statute of limitations.** Except in the case of a fraudulent return or of neglect, or refusal to make a return, every deficiency shall be assessed within three (3) years from the due date of the return or the date of filing the return, whichever period expires later.

Rules and regulations.

Section 17. **Rules and regulations to be established by state board.** The state board of equalization shall have the power, and it shall be its duty to adopt, publish and enforce the rules and regulations consistent with and necessary for carrying out the provisions of this act.

Severability clause.

Section 18. **Severability.** If any section, subsection, sentence or clause in the act shall, for any reason, be held

unconstitutional or void, such decision shall not affect the validity or meaning of any other portion of this act.

Repealing clause.

Section 19. All acts and parts of acts in conflict herewith are hereby repealed.

Same.

Section 20. Sections 84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806, 84-1807, 84-1808, 84-1809, 84-1810, 84-1811, 84-1813, 84-1814, 84-1818, 84-1818.1, 84-1819, 84-1820, 84-1821, 84-1822, 84-1823, 84-1828, and 84-1829, R.C.M. 1947, are repealed.

Approved: March 17, 1969.

CHAPTER NO. 370

An Act to Provide a Privilege Tax Upon Possession and Use of Tax-Exempt Property; Providing Exceptions Thereto; Fixing the Rate of Such Tax and Credit Against Tax; Providing for Assessment, Collection and Distribution of Said Taxes; Providing Penalties for Failure to Pay the Tax and Preserving Constitutional Exemption, and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Privilege tax upon possession and use of tax-exempt property—exceptions.

Section 1. **Privilege tax upon possession and use of tax-exempt property—exceptions.** From and after the effective date of this act there is imposed and there shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit or easement relates.

Rate of tax—credit.

Section 2. **Rate of tax same as ad valorem property tax—credit against tax on use of federally owned property.** The tax imposed upon such possession or other bene-